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1 RECORD OF ORAL HEARING
2
3 UNITED STATES PATENT AND TRADEMARK OFFICE
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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8
9

10 Ex parte HANNES EBERLE, CHRISTOPHER S. LEON,
11 BODO MAASS, ANURAG PATNAIK,
12 ALBERTO SANTA ANA, and MICHAEL ZIRNGIBL
13

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15 Appeal 2008-1375
16 Application 09/661,375
17 Technology Center 2600
18

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20 Oral Hearing Held: June 19, 2008
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22

23
24 Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT, and KEVIN F.
25 TURNER, Administrative Patent Judges.
26

27 ON BEHALF OF THE APPELLANTS:
28

29 SYED ALI, ESQUIRE
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34 The above-entitled matter came on for hearing on Thursday, June 19,
35 2008, commencing at 1:00 p.m., at The U.S. Patent and Trademark Office,
36 600 Dulany Street, Alexandria, Virginia, before Virginia Johnson, Notary
37 Public.

1 MS. BEAN: Calendar Number 35. Mr. Ali.

2 JUDGE RUGGIERO: Good afternoon. Want to spell your name for
3 the reporter?

4 MR. ALI: Sure. First name is Syed, S Y E D, last name is Ali, A L I.
5 For the most part, I think the briefs and the examiner's answer kind of
6 support the issue's credibility, but there's just a couple of features which we
7 want to re-emphasize to kind of clarify that -- I think that we all think that
8 the references really have been treated improperly in terms of the full
9 context of what the claim language recites here.

10 In particular, basically, there's two features I want to focus on, the
11 first one being the nature of the content that's being generated and delivered
12 to subscribers of voice services, and, secondly, the nature of the way that
13 communication session with a subscriber is established.

14 First, in reference to the type of content that's being used here, it's
15 important to note that there's two-step process of kind of gathering the
16 content that's going to be delivered to subscribers. As you can see in the
17 first part of the claim, where they're providing at least one voice service and
18 subsequently generating content for that voice service, it's important to note
19 here that generating the content for the voice service is specifically recited as
20 being performed when the voice service is executed. In other words, you
21 know, when the server, whatever, determines that it's time to deliver content
22 to the user, it kind of looks at what the user subscribes and kind of gathers
23 all that different type of data. And, then subsequently, when generating the
24 active voice page, that's where a subscriber's specific personalization
25 information is applied to that. So there's kind of a two-step thing: gathering

1 the content and then, on top of that, applying personalization information to
2 that.

3 And way that the examiner has supplied the reference against this
4 feature of Lumelsky kind of looks first at when the content is initially
5 altered. It's important to note here that the content that's being authored at
6 Lumelsky kind of relates to straight speech files, kind of like an author
7 sitting with a microphone and recording something and just generates a
8 speech file and subsequently -- you know, so that's not being preformed
9 when the voice service is executed. It's kind of preformed in advance. It's
10 pre-existing thing, like reading news reports in the morning or reports in the
11 morning, whatever, something like that.

12 Subsequently, when the subscriber gets the content, that's when they
13 kind of go and assemble the different speech files that the user might want,
14 and those are just delivered to the user as is. So when the voice services
15 execute, yes, there's a gathering step that might be considered, you know,
16 somewhat reasonably and obvious to generate content, but there's no
17 subsequent step of taking that content that's been assembled for that user
18 and applying subscriber-specific information to that.

19 For example, one thing that we did do is there's user profiles where
20 you can have login aliases and that kind of thing. So the user can interact
21 with a personal portfolio, some personal stocks, and there's nothing even
22 remotely close to that capability in reference. So that two-step process of
23 gathering content when the voice services are executed and then delivering
24 that to the user, you know, that's not necessary in the reference.

25 Secondly, in relation to how communication extensions are
26 established through the user --

1 JUDGE TURNER: Can I stop you just real quick?

2 MR. ALI: Sure.

3 JUDGE TURNER: On the first point --

4 MR. ALI: Sure.

5 JUDGE TURNER: -- sort of similar to your discussion here and also
6 in the brief and the reply brief you really sort of dealing with the base
7 reference and solely -- and there doesn't seem to be any reference to Ladd,
8 which is the secondary reference.

9 MR. ALI: Well, in the way that the reference applied against the
10 claim language of Lumelsky was the only reference that was used, and
11 especially in relation to the content generating part. The only reason why
12 Ladd was brought in at all on the rejection was through the features of input
13 elements being imbedded in the active voice page.

14 Ladd just kind of generally discusses, you know, Vox ML (phonetic
15 sp.), kind of a known mark-up language, and that's --

16 JUDGE TURNER: But wouldn't -- but from Ladd wouldn't you have
17 that -- have an interaction as part of that voice mail system? I mean, it
18 seems that Ladd talks about the fact that you can -- I can give speech
19 commands and I can receive data back from my voice mail system.

20 MR. ALI: Well, the interaction that's discussed in Ladd kind of
21 maybe ties in with the way that the subscriber might interact with the content
22 once it's delivered. It doesn't really have any bearing on what content goes
23 into that communication or into that session. So to the extent that it's even
24 relevant, it would be perhaps in the sense of, you know, of letting the speech
25 files of Lumelsky in a box in all page or using a box in all page to somehow,
26 you know, combining those two technologies in the way that the contents

1 deliver. It doesn't necessarily have any bearing on what content that's
2 included therein, includes.

3 So whether you use a CES (phonetic sp.) based file as in Lumelsky
4 uses a speech file, or Vox ML file as in Ladd, in either case there's nothing
5 as far as the two-step process of generating and then personalizing the
6 content that would go in that.

7 JUDGE TURNER: Okay, but content is personalized in the base
8 reference in Lumelsky, right?

9 MR. ALI: It's personalized to the extent of choosing certain topics of
10 interest according to the user profile. So, you know, if you look back at the
11 claim language, we have one step which says generating the content for the
12 voice service when the voice service is executed.

13 You know, might be willing to concede to some extent that gathering
14 different PCS (phonetic sp.) based files or any other files of Vox ML, even
15 of Ladd, at the time when content is being delivered to the user, you know,
16 that might be generating content when it's executed. There's no subsequent
17 step of creating personalized content by applying subscriber-specific
18 personalization information to that. So, I mean, if you look at the specific
19 claims in the claim, and there's a distinction between generated content
20 when the voice service executed and the subsequent personalized content as
21 created by applying further personalization information to that -- okay.

22 Secondly, in regards to initiating outbound communication here, I'd
23 like to note that the full context of the claim language doesn't just say that
24 you're initiating communication to a user, but that that communication also
25 establishes an interactive voice broadcast. Now, again, the examiner has
26 relied almost solely on Lumelsky for this feature, and, you know, Lumelsky

1 is pretty clear in saying that all sessions are established by the user. And if
2 you look at Column 11, for example, around Line 47 or so, the reference
3 states that the user initiates communication session by issuing a logon
4 command. And subsequently, that's when, you know, the server will go in
5 and look and see what kind of topics the user might be interested in and
6 delivers those.

7 So even if you could say that, you know, Lumelsky subsequently
8 initiates a communication to deliver that information, that communication is
9 not intended "to establish an interactive voice mail broadcast". So what the
10 distinction here is if you look in our specification this really kind of comes
11 out in what's really crystallized in Page 62 onwards where we're
12 distinguishing how sessions might be established by users' inbound
13 communication and then providing the content or kind of, you know,
14 looking for certain conditions as scheduling criteria and at that time going
15 and gathering the content and initiating a call to the user.

16 So there's not really any user interaction required in order to establish
17 that session. The call server kind of determines that that content is ready to
18 be delivered according to the schedule, or whatever, and then initiates a call
19 to that user to deliver the content. So, you know, even to the extent that
20 Lumelsky describes push technology, a user would still have to establish a
21 session with the server and then possibly passively receive information after
22 that. But, again, the user first has to establish that session, which precludes
23 the finding that Lumelsky initiates communications to establish interactive
24 voice mail broadcasts.

1 JUDGE TURNER: I have another question. Most of the arguments
2 seem directed towards Claim 27, but you also include basically the same
3 arguments in Claim 28, which includes the means-plus function.

4 MR. ALI: Right. I mean, it's illustrative of Claim 27, and Claim 28
5 is identical language with the exception of the means part.

6 JUDGE TURNER: But, obviously, it's interpreted differently --

7 MR. ALI: Right, right, right.

8 JUDGE TURNER: -- because of 112 Call Server. From reading the
9 brief, it looks like the means for initiating is indicated as being the call
10 server.

11 MR. ALI: Correct.

12 JUDGE TURNER: Is it not possible that there's something
13 equivalent to a call server in Ladd?

14 MR. ALI: I didn't see anything at the 112 Call Server in Ladd, and,
15 you know, that's also not the way the examiner applied the reference. But, I
16 mean, just quickly looking at it, Figure 2 says, you know, Step 151, call into
17 network or system. I think that would pretty clearly suggests that the
18 incoming call subsequent step, answering the incoming call. You know,
19 again, the user seems to be initiating that session there.

20 JUDGE TURNER: But, I mean, just in terms of --

21 MR. ALI: I don't see --

22 JUDGE TURNER: -- looking at the actual structure which the
23 means-plus function is reading upon, if I look at, let's say, Figure 3 of Ladd
24 and I look at, let's say, 212, I mean the question there is is there a distinction
25 between, let's say, 212 which includes like a voice browser and hardware,

1 software and databases, is there a distinction between that and, let's say, 18
2 from Appellant's specification?

3 MR. ALI: I don't see any component in entry 12 that specifically
4 looks like a dialer or kind of outgoing call server. Let me try to find my
5 figure here.

6 JUDGE TURNER: Okay.

7 MR. ALI: Right. So if you look at Figure 3C of our specification,
8 there's a call builder, call database, and, you know, compared to -- there's
9 components there that are designed to initiate communications going
10 outwards, not necessarily in response to incoming calls. You know, there is
11 something here --

12 JUDGE TURNER: So are you saying that unlike the brief that you
13 don't think that the means for initiating the outbound communication, that
14 the actual structural support is a different element than you indicated in the
15 brief? The brief says 18, but you're sort of saying that maybe 181 would be
16 a better --

17 MR. ALI: Yeah, 181 --

18 JUDGE TURNER: -- structure representation.

19 MR. ALI: -- is -- kind of encompasses all those different things,
20 including call builder and everything like that. Really, the call server, which
21 I find the passages here that really get into that -- all right, for example, on
22 Page 46, we talk about the call server 18 includes various components. Page
23 47, Lines 3 onwards, the call builder is the module that initiates and
24 conducts telephone calls. Call builder dials and establishes a connection
25 with the user, so -- and the technology kind of is designed to initiate
26 telephone calls without there necessarily being any incoming call that

1 proceeds that. And if you contrast that with the description beginning on
2 Page 62, we talk about how that call server integrates inbound and outbound
3 calling. It's, you know, when -- suppose in certain circumstances the user
4 might not want to wait for the server to initiate the call, then you might have
5 to have additional features that also enable inbound calling.

6 So the main thing is that the call -- the means for initiating an
7 outbound communication wouldn't necessarily -- or it doesn't necessarily
8 implicate those features for any inbound calling. It's really the call builder
9 that delivers the call going outward.

10 JUDGE TURNER: Okay.

11 MR. ALI: And I'm not certain -- I don't think -- I don't see anything
12 in Ladd that --

13 JUDGE TURNER: You don't think there's any equivalent structure
14 in Ladd?

15 MR. ALI: I don't see anything.

16 JUDGE TURNER: Or in the base reference?

17 MR. ALI: No, certainly not in the base reference.

18 JUDGE TURNER: Okay.

19 MR. ALI: Okay? Any have questions? Great.

20 JUDGE TURNER: Okay.

21 MR. ALI: Well, thanks very much for your time. You have a good
22 rest of the afternoon.

23 (Whereupon, the hearing concluded on June 19, 2008.)